

# SUPREME COURT OF ARKANSAS

No. CR05-1150

LEXIE McNABB,

APPELLANT,

VS.

STATE OF ARKANSAS,

APPELLEE,

**Opinion Delivered** September 7, 2006

PETITION FOR REHEARING FROM  
THE FAULKNER COUNTY CIRCUIT  
COURT,

NO. CR05-1150,

HON. MICHAEL A. MAGGIO, JUDGE.

CONCURRENCE.

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**JIM GUNTER, Associate Justice**

I concur in the court's decision denying the petition for rehearing, but write separately to express my concern with the current method for perfecting an appeal from district court to circuit court. In my opinion, an appeal from district court to circuit court should be taken by filing a copy of the district court docket sheet in the circuit court. The district court is not a court of record. The only real purpose of the district court record on appeal is to give jurisdiction to the circuit court.

The circuit court reviews appeals from district court *de novo*. Ark. Code Ann. § 16-17-703 (2006) provides:

There shall be no jury trials in district court. In order that the right of trial by jury remains inviolate, all appeals from judgment in district court shall be *de novo* to circuit court.

The purpose of a *de novo* appeal from the district court is to provide a trial, not a review of

any record. Therefore, requiring the appealing party to file a “record of proceedings,” which includes more than the docket sheet, is superfluous. To require more, making the district court a court of record, will increase the expense, which the vast majority of litigants in district court can ill afford.

In this case, our decision should simply remand for *de novo* trial and let the parties develop the record.